

REMARKS

The Office Action dated October 27, 2008 has been received and carefully noted. The above amendments to the claims, and the following remarks, are submitted as a full and complete response thereto.

Claims 1-18 are currently pending in the application. Claim 17 has been amended to more particularly point out and distinctly claim the subject matter of the invention. No new matter has been added. Claims 1-18 are respectfully submitted for reconsideration.

As a preliminary matter, Applicants wish to thank the Examiner for the courtesy extended in conducting a telephone interview on February 25, 2009. The amendments outlined above and the arguments discussed below reflect the substance of the interview.

The Office Action rejected claim 17 under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. In particular, the Office Action alleged that the claim is directed to computer program per se and is therefore directed to non-patentable subject matter. Applicants submit that claim 17 recites statutory subject matter for at least the following reasons.

Claim 17 has been amended to recite, in part, "A computer-readable medium encoded with a computer program, the computer program configured to control a processor to perform operations comprising." As discussed in MPEP §2106.01, a computer programs is "functional descriptive material" which imparts functionality when employed as a computer component. When functional descriptive material, such as a computer program, is recorded on some computer readable medium, it becomes

structurally and functionality interrelated to the medium and will be statutory. *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994). Furthermore, as indicated during the telephone interview with the Examiner, the amendment of claim 17 to recite "A computer-readable medium encoded with a computer program," should overcome the rejection. Accordingly, Applicants submit that claim 17 is directed to statutory subject matter and it is respectfully requested that this rejection be withdrawn.

The Office Action again rejected claims 1-18 under 35 U.S.C. §103(a) as being unpatentable over Sutskover (U.S. Patent Pub. No. 2006/0025079) in view of Wang (U.S. Patent No. 7,013,146). Applicants respectfully submit that this rejection is improper for the following reasons.


As discussed during the telephone interview of February 25, 2009 and submitted in the Response of July 23, 2008, Sutskover does not constitute a valid prior art reference with respect to the present application. Sutskover has a filing date which is after the priority date of the present application. In particular, Sutskover has a filing date of August 2, 2004 and the present application has a priority date of September 6, 2002 based on the international filing date. Accordingly, the present application has an effective filing date which is before the filing date of Sutskover. As such, the rejection of claims 1-18 under 35 U.S.C. §103(a) as being unpatentable over Sutskover and Wang is improper and must be withdrawn.

Applicants respectfully assert that all of the issues raised by the Office Action have been addressed and overcome. Therefore, Applicants respectfully request that the application be allowed and a timely Notice of Allowance be issued in this case.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, the applicants' undersigned representative at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, the applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,


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Enclosures: Petition for Extension of Time